

when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in paragraph (e) of this section.

(ii) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the NHPRC.

(jj) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(kk) *Suspension* means an action by the NHPRC that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the NHPRC. Suspension of an award is a separate action from suspension under NARA regulations implementing E.O. 12549 and E.O. 12689, "Debarment and Suspension" (36 CFR Part 1209).

(ll) *Termination* means the cancellation of NHPRC sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(mm) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(nn) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an

accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(oo) *Unobligated balance* means the portion of the funds authorized by the NHPRC that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(pp) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(qq) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

#### § 1210.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 1210.4.

#### § 1210.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. The NHPRC may apply more restrictive requirements to a class of recipients when approved by OMB. The NHPRC may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the NHPRC.

#### § 1210.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing

## § 1210.10

work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," published at 36 CFR part 1207.

### Subpart B—Pre-Award Requirements

#### § 1210.10 Purpose.

Sections 1210.11 through 1210.17 prescribes forms and instructions and other pre-award matters to be used in applying for NHPRC awards.

#### § 1210.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the NHPRC shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* The NHPRC shall notify the public of its intended funding priorities for discretionary grant programs.

#### § 1210.12 Forms for applying for Federal assistance.

(a) The NHPRC shall comply with the applicable report clearance requirements of 5 CFR Part 1320, "Controlling

## 36 CFR Ch. XII (7-1-05 Edition)

Paperwork Burdens on the Public," with regard to all forms used by the NHPRC in place of or as a supplement to the Standard Form 424 (SF-424) series.

(b) Applicants shall use the SF-424 (Application for Federal Assistance) and NA Form 17001 (Budget Form) forms and instructions prescribed by the NHPRC Program Guidelines. OMB Control Number 3095-0004 has been assigned to the Budget Form. OMB Control Number 3095-0013 has been assigned to the NHPRC Program Guidelines.

(c) Applicants shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC) under E.O. 12372, "Intergovernmental Review of Federal Programs." The name and address of the SPOC for a particular State can be obtained from the NHPRC or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

#### § 1210.13 Debarment and suspension.

The NHPRC and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, "Debarment and Suspension" (36 CFR Part 1209). This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

#### § 1210.14 Special award conditions.

If an applicant or recipient has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this part, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, the NHPRC may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the